

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

KIRK ANTHONY COLLINS,

Defendant and Appellant.

B211899

(Los Angeles County
Super. Ct. No. MA039872)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Thomas R. White, Judge. Affirmed as modified.

Rita L. Swenor, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan Sullivan Pithey and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Appellant Kirk Anthony Collins was charged with second degree commercial burglary (count 1) and grand theft (count 2), plus three prior convictions that had prison terms (Pen. Code, § 667.5, subd. (b)).¹

On December 13, 2007, pursuant to a plea bargain, appellant pled nolo contendere to count 1 and admitted the three prior convictions. Count 2 was dismissed. He received the middle term of two years on count 1, plus three years for the prior convictions. Execution of sentence was suspended, and he was placed on three years of formal probation. His sentence included payment of a \$200 restitution fine pursuant to section 1202.4, subdivision (b) (section 1202.4(b)) and a \$200 probation revocation restitution fine pursuant to section 1202.44.

On October 17, 2008, after hearing evidence, the trial court found appellant in violation of probation and imposed the previously suspended five-year prison sentence. This time, it imposed a \$1,000 restitution fine pursuant to section 1202.4(b) and stayed a \$1,000 parole revocation restitution fine pursuant to section 1202.45.

Appellant contends that the trial court erred when it increased the amount of the restitution fine from \$200 to \$1,000, as the original amount of the restitution fine remained in force despite revocation of probation. Appellant also contends that the parole revocation restitution fine had to be set at that same amount, \$200. (*People v. Garcia* (2006) 147 Cal.App.4th 913, 917; *People v. Arata* (2004) 118 Cal.App.4th 195, 201-203; *People v. Chambers* (1998) 65 Cal.App.4th 819, 821-823.) Respondent agrees. Utilizing the remedy employed in the foregoing cases, we strike the second restitution fine of \$1,000, reduce the amount of the parole revocation restitution fine to \$200, and order preparation of an amended abstract of judgment.

DISPOSITION

The judgment is modified by striking the \$1,000 restitution fine pursuant to section 1202.4(b) that was imposed when probation was revoked, leaving in force the \$200 restitution fine pursuant to section 1202.4(b) that was imposed when probation was

¹ Subsequent statutory references are to the Penal Code unless otherwise stated.

granted. The amount of the parole revocation restitution fine that was imposed and stayed pursuant to section 1202.45 is reduced to \$200. An amended abstract of judgment shall be prepared, reflecting a restitution fine of \$200, if not already paid, and a stayed parole revocation fine of \$200. A certified copy of the amended abstract of judgment shall be prepared and delivered to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

FLIER, J.

We concur:

RUBIN, ACTING P.J.

BIGELOW, J.